



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[EPA-R03-OAR-2011-0681; FRL-9625-3]

#### **Designation of Areas for Air Quality Planning Purposes; Maryland; Determination of Nonattainment and Reclassification of the Baltimore 1997 8-Hour Ozone Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is making a determination that the Baltimore moderate 8-hour ozone nonattainment area (the Baltimore Area) did not attain the 1997 8-hour ozone national ambient air quality standard (NAAQS) by its June 15, 2011 attainment date. The attainment date for moderate ozone nonattainment areas was June 15, 2010. However, the Baltimore Area qualified for a 1-year extension of its attainment date and EPA extended the area's attainment date to June 15, 2011. This determination is based on EPA's review of complete, quality assured, and certified ambient air quality monitoring data for the 2008-2010 monitoring period that are available in the EPA Air Quality System (AQS) database. As a result of this determination, the Baltimore Area is reclassified by operation of law as a serious 8-hour ozone nonattainment area for the 1997 8-hour ozone standard. Consequently, the State of Maryland must submit State Implementation Plan (SIP) revisions for the Baltimore Area to meet the Clean Air Act (CAA) requirements for serious ozone nonattainment areas. In this action, EPA is setting the due date for the State of Maryland to submit the necessary SIP revisions to EPA as no later than September 30, 2012. The serious area attainment date for the Baltimore Area is as expeditiously as practicable, but not later than June 15, 2013. This action is being taken under the CAA.

**DATES:** Effective Date: This final rule is effective on [insert date 30 days from date of publication].

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number **EPA-R03-OAR-2011-0681**. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

**FOR FURTHER INFORMATION CONTACT:** Maria A. Pino, (215) 814-2181, or by e-mail at [pino.maria@epa.gov](mailto:pino.maria@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On September 1, 2011 (76 FR 54412), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed to determine that the Baltimore Area did not attain the 1997 8-hour ozone NAAQS by its June 15, 2011 attainment date. The Baltimore Area encompasses Baltimore City and Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties, all in Maryland. The attainment date for moderate ozone nonattainment areas was June 15, 2010. However, the Baltimore Area qualified for a 1-year extension of its attainment date. Therefore, EPA extended the area's attainment date to June 15, 2011. This proposal was

based on EPA's review of complete, quality assured, and certified ambient air quality monitoring data for the 2008-2010 monitoring period that are available in the EPA AQS database.

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time, than was understood when the pre-existing 1-hour ozone standard was set. At that time, EPA determined that the 8-hour standard would be more protective of human health, especially children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma. On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075 ppm. This rulemaking relates only to the 1997 8-hour ozone NAAQS, and does not address the 2008 NAAQS.

## **II. Summary of Action**

EPA is determining that the Baltimore Area did not attain the 1997 8-hour ozone NAAQS by its June 15, 2011 attainment date. As a result of this determination, the Baltimore Area is reclassified by operation of law as a serious 8-hour ozone nonattainment area for the 1997 8-hour ozone standard. Consequently, the State of Maryland must submit SIP revisions for the Baltimore Area to meet the CAA requirements for serious ozone nonattainment areas. The State of Maryland must submit the necessary SIP revisions to EPA by no later than September 30, 2012. The serious area attainment date for the Baltimore Area is as expeditiously as practicable, but not later than June 15, 2013.

Other specific information regarding this determination and reclassification and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

### **III. Summary of Public Comment and EPA Response**

On October 3, 2011, EPA received comments on the NPR from Emery Hines, Empowered Representative Chair of the Baltimore Regional Transportation Board (BRTB). A summary of the comments submitted and EPA's response is provided below.

*Comment:* The commenter wrote in support of the Maryland Department of the Environment (MDE) being allowed the option to use a "hybrid" modeling approach to complete the SIPs required once the Baltimore Area is reclassified to serious. The approach would use EPA's Motor Vehicle Emission Simulator (MOVES) model to establish attainment year mobile source emissions budgets, but would use existing air quality modeling that used MOBILE6.2-based mobile emissions for the serious area attainment demonstration modeling.

*Response:* Starting March 2, 2010, EPA's MOVES model must be used to establish motor vehicle emissions budgets in all new SIPs. (*See* 75 FR 9411.) Therefore, MOVES must be used to develop the emission inventories for the serious area reasonable further progress (RFP) requirements resulting from this reclassification. Furthermore, MOVES must be used to establish motor vehicle emissions budgets associated with RFP and the attainment year.

*Comment:* The commenter stated that given the short timeframe to submit the revised SIP and resource limitations in providing a new air quality modeling demonstration using MOVES, the

BRTB supports the option of a hybrid approach that provides for the best use of available resource while protecting air quality.

*Responses:* EPA will work closely with MDE to develop its serious area attainment demonstration for the Baltimore Area, while being mindful of time and resource constraints. Therefore, EPA intends to allow MDE to use its existing attainment demonstration modeling, which used MOBILE6.2, for the serious area SIP. However, the attainment demonstration modeling should be supplemented with more recently available modeling from EPA and/or the Ozone Transport Commission, which uses MOVES, as part of a weight of evidence analysis.

#### **IV. Final Action**

EPA is making a determination that the Baltimore Area did not attain the 1997 8-hour ozone NAAQS by its June 15, 2011 attainment date. The Baltimore Area is reclassified by operation of law as a serious 8-hour ozone nonattainment area for the 1997 8-hour ozone standard.

Consequently, the State of Maryland must submit SIP revisions for the Baltimore Area to meet the CAA requirements for serious ozone nonattainment areas by no later than September 30, 2012. The serious area attainment date for the Baltimore Area is as expeditiously as practicable, but not later than June 15, 2013.

#### **V. Statutory and Executive Order Reviews**

Under the CAA, within six months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator is required to determine whether the area attained the standard by that date, and if attainment has not been achieved, the area “shall be reclassified by operation of law.” 42 U.S.C. 7511(b)(2). Thus, in actions

addressing failure to attain a NAAQS by an applicable attainment date, EPA's role is to simply review the relevant air quality information provided by the state, and if the area did not meet the NAAQS by the applicable attainment date, EPA must reclassify the area as required under the Act. Accordingly, this action does not impose additional requirements beyond those mandated by the CAA itself. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the specific nonattainment finding and reclassification do not trigger Clean Air Act requirements for tribal governments pursuant to the Tribal Authority Rule (40 CFR 49.1 *et seq.*), and thus will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication]. Filing a petition for reconsideration by the Administrator of this final

rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, determining that the Baltimore Area did not attain the 1997 8-hour ozone NAAQS by its June 15, 2011 attainment date and reclassifying the Baltimore Area by operation of law to be a serious 8-hour ozone nonattainment area for the 1997 8-hour ozone standard, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 81**

Air pollution control, National parks, Wilderness areas.

January 24, 2012  
Dated:

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W.C. Early, Acting  
Regional Administrator,  
Region III.



40 CFR part 81 is amended as follows:

**Part 81 – [Amended]**

1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. In §81.321 the table entitled “Maryland—Ozone (8-Hour Standard)” is amended by revising the entries for Baltimore, MD, revising footnote 4, and adding a new footnote 5 at the end of the table to read as follows:

§81.321        Maryland.

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Maryland—Ozone (8-Hour Standard)

Designated area	Designation <sup>a</sup>		Category/classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Baltimore, MD:				
Anne Arundel County		Nonattainment	( <sup>5</sup> )	Subpart 2/Serious. <sup>4</sup>
City of Baltimore		Nonattainment	( <sup>5</sup> )	Subpart 2/Serious. <sup>4</sup>
Baltimore County		Nonattainment	( <sup>5</sup> )	Subpart 2/Serious. <sup>4</sup>
Carroll County		Nonattainment	( <sup>5</sup> )	Subpart 2/Serious. <sup>4</sup>
Harford County		Nonattainment	( <sup>5</sup> )	Subpart 2/Serious. <sup>4</sup>
Howard County		Nonattainment	( <sup>5</sup> )	Subpart 2/Serious. <sup>4</sup>
*   *   *   *   *   *   *				

<sup>a</sup>Includes Indian Country located in each county or area, except as otherwise specified.

<sup>1</sup>This date is June 15, 2004, unless otherwise noted.

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<sup>4</sup>Attainment date is June 15, 2013.

<sup>5</sup> Effective [Insert date 30 days from date of publication in the Federal Register].

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[FR Doc. 2012-2218 Filed 01/31/2012 at 8:45 am; Publication Date: 02/01/2012]